

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to standards of practice and telepsychology

The Board of Psychology hereby amends Chapter 240, “Licensure of Psychologists”; adopts new Chapter 243, “Practice of Psychology”; and amends Chapter 244, “Prescribing Psychologists,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 272C.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 154B and sections 147.9, 147.55, 272C.4, 272C.9 and 272C.10 and 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making establishes standards of practice for psychologists who provide patient care through telepsychology, requires Health Insurance Portability and Accountability Act (HIPAA)-compliant technology, and imposes other requirements to ensure the patient’s confidential health information is secure. These rules align with the Board of Medicine’s rules governing telemedicine, which will ensure that psychologists operate under uniform standards when coordinating remote care. The new chapter also establishes the minimum standards of practice for licensed psychologists, provides definitions of practice terminology, and specifies the requirements for patient records management, psychological testing, participation in judicial proceedings and reporting to the Board.

In addition, there are two amendments that pertain to technical corrections. The first amendment pertains to Chapter 240 and ensures uniformity with the chapter by removing the requirement that supervised professional experience by a postdoctoral supervisee take place in the same physical setting as the supervisor. The second amendment pertains to 2020 Iowa Acts, House File 2389, which amended Iowa Code chapter 17A to remove the term “variance” and required that agencies’ rules about waiver procedures refer only to waivers. The word “variance” is therefore removed from Chapter 244.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5617C**. A virtual public hearing was held on May 25, 2021, at 10 a.m. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on August 6, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **240.6(2)“a”(3)** as follows:

(3) Work in the same physical setting as the supervisor unless ~~a completed off-site supervision form is submitted to and approved by the board~~ the requirements stated in subparagraph 240.6(2)“b”(11) are met;

ITEM 2. Adopt the following new 645—Chapter 243:

CHAPTER 243
PRACTICE OF PSYCHOLOGY

645—243.1(154B) Definitions.

“*APA*” means the American Psychological Association.

“*Clinical records*” means records created by a licensee regarding the observation and treatment of patients, such as progress notes, but does not include psychotherapy notes.

“*Examinee*” means a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder.

“*Licensee*” or “*licensed*” means an individual with an active license to practice psychology, including a provisional license, or a certificate of exemption issued by the board.

“*Patient*” means an individual under the care of a licensee in a clinical role and is synonymous with the term client.

“*Personal representative*” means a person authorized to act on behalf of the patient in making health care-related decisions. A personal representative may include a parent or legal guardian, an individual with a health care power of attorney, an individual with a general power of attorney or durable power of attorney that includes the power to make health care decisions, or a court-appointed legal guardian.

“*Psychotherapy notes*” means notes recorded by a licensee documenting or analyzing the contents of a conversation during a private therapy session with a patient, or a group, joint, or family therapy session, that are maintained separately from the patient's clinical records. Psychotherapy notes excludes medication prescription monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of any clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

“*Telepsychology*” means the provision of psychological services using telecommunication technologies.

“*Test data*” means raw and scaled scores, patient responses to test questions or stimuli, and notes and recordings concerning patient statements and behavior during an examination.

645—243.2(147,154B,272C) Purpose and scope. The purpose of this chapter is to set the minimum standards of practice for licensees practicing in Iowa. The practice of psychology is occurring in Iowa if the patient or examinee is located in Iowa. Licensees shall ensure any interns or residents under supervision adhere to the minimum standards of practice and must comply with the requirements set forth in rule 645—240.9(154B). The APA Code of Ethics is applicable and enforceable to the extent it does not conflict with any standards of practice set forth in this chapter. A licensee may be disciplined for any violation of this chapter or the APA Code of Ethics.

645—243.3(154B) Access to records.

243.3(1) Clinical records generally. Upon a signed release from the patient or the patient’s personal representative, a licensee shall provide clinical records in accordance with the release unless there is a ground for denial under HIPAA.

243.3(2) Psychotherapy notes. A licensee is not required to release psychotherapy notes in response to a signed release, but a licensee who chooses to release psychotherapy notes may only provide psychotherapy notes if the signed release specifically authorizes the release of psychotherapy notes.

243.3(3) Substance use disorder treatment programs. Licensees who practice in a federally assisted substance use disorder treatment program, also known as a part 2 program, are prohibited from disclosing any information that would identify a patient as having a substance use disorder unless the patient provides written consent in compliance with part 2 requirements.

243.3(4) Clinical records of minor patients. A minor patient is a patient who is under the age of 18 and is not emancipated. A licensee is not required to release the clinical records of a minor patient to the minor’s personal representative if releasing such records is not in the minor’s best interest. When a minor patient reaches the age of 18, the clinical records belong to the patient.

243.3(5) Clinical records of deceased patients. A licensee shall provide the clinical records of a deceased patient to the deceased patient’s executor upon a written request accompanied by a copy of the patient’s death certificate and a copy of the legal document identifying the requestor as the patient’s executor.

243.3(6) Forensic records. A licensee shall provide forensic records consistent with the APA Specialty Guidelines for Forensic Psychology.

243.3(7) Board. A licensee shall provide clinical records, test data, or forensic records to the board as requested during the investigation of a complaint. A licensee is not required to obtain a patient release to send such information to the board because the board is a health oversight agency.

243.3(8) Exceptions. Nothing herein shall be construed as requiring a licensee to disclose information when there is a legal basis for not disclosing the information.

645—243.4(154B) Psychological testing. A licensee may administer psychological tests and assessments to a patient or examinee provided the licensee has appropriate training for any psychological test or assessment utilized and the test or assessment is scientifically founded.

243.4(1) Use of proctors. A licensee may delegate the administration of a standardized test, intelligence test, or objective personality assessment to an appropriately trained individual. The licensee is responsible for supervising any proctors.

243.4(2) Release of test data. A licensee shall not provide test data to any person, except that upon a written request of a patient or examinee who is the subject of a test, the test data shall be disclosed to a licensed psychologist designated by the patient or examinee. A psychologist who receives test data in this manner may not further disseminate the test data.

645—243.5(154B) Judicial proceedings. Prior to participating in a judicial proceeding, a licensee shall become familiar with the rules governing the proceeding. A licensee shall understand and clearly identify the licensee’s role in the proceeding.

243.5(1) Licensure. A license to practice psychology in Iowa or an exemption from licensure is not required solely to testify as an expert witness in court, provided the psychologist did not personally examine the examinee. A psychologist who personally examines an examinee located in Iowa for the

purpose of providing an expert opinion is required to be licensed or exempt from licensure at the time of the evaluation.

243.5(2) Custody evaluations. A licensee who performs a child custody evaluation shall comply with the APA Guidelines for Child Custody Evaluations in Family Law Proceedings.

645—243.6(147,154B,272C) Reports required. Within 30 days, a licensee shall report to the board the following:

243.6(1) A change of name or address. Name and address changes may be reported at www.idph.iowa.gov/Licensure.

243.6(2) A criminal conviction, even if the adjudication of guilt is deferred, withheld, or not entered. A conviction includes Alford pleas and pleas of nolo contendere.

243.6(3) Any disciplinary action taken by another licensing authority in this state, another state, territory, or country.

243.6(4) Any occurrence of any judgment or settlement of a malpractice claim or action.

243.6(5) Acts or omissions of the board's statute or administrative rules committed by another person licensed to practice by the board when a licensee has first-hand knowledge of such acts or omissions. This duty to report does not apply when a licensee has knowledge as a result of the other licensee being a patient.

645—243.7(154B) Telepsychology. A psychologist may practice telepsychology provided the following are met:

243.7(1) The psychologist must be licensed or be exempt from licensure in the jurisdiction where the patient or examinee is located.

243.7(2) Prior to initiating telepsychology with a new patient or examinee, a licensee shall take reasonable steps to verify the identity and location of the patient or examinee.

243.7(3) A licensee shall ensure informed consent for telepsychology includes a description of any limitations of services as a result of the technology utilized.

243.7(4) A licensee shall gain competency in the use of a particular technology prior to utilizing it in practice. A licensee shall only use technologies that are secure and functioning properly.

243.7(5) A licensee shall apply the same ethical and professional standards of care and professional practice that are required when providing in-person psychological services. If the same standard of care cannot be met with telepsychology, a licensee shall not utilize telepsychology.

645—243.8(154B) Records. A licensee shall complete clinical records as soon as practicable to ensure continuity of services. All clinical records shall be completed within 30 days after the service or evaluation is complete in the absence of significant extenuating circumstances. Clinical records and psychotherapy notes shall be retained for at least seven years after the last date of service, or until at least three years after a minor reaches the age of 18, whichever is later. Forensic records shall be completed and retained consistent with the APA Specialty Guidelines for Forensic Psychology.

These rules are intended to implement Iowa Code chapters 147, 154B, and 272C.

ITEM 3. Amend rule 645—244.12(148,154B) as follows:

645—244.12(148,154B) Joint waiver ~~or variance~~—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

[Filed 8/18/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.